IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No. 2123 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GULAM FARID MASJID TRUST THROUGH ITS TRUSTEE ABDULLAMIY - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MB GANDHI for petitioner(s) : 1,MRS TRUSHA M GANDHI for petitioner(s) : 1,
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR PRASHANT G DESAI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/07/2007

ORAL JUDGMENT

1. By way of this petition under section 482 of the Criminal Procedure Code, the petitioner – original accused have prayed for an appropriate order to quash and set aside the complaint and

the summons issued by the Court of learned Metropolitan Magistrate, Court No.8, Ahmedabad issued in criminal complaint No.2 of 2006.

2. A criminal complaint has been filed against the petitioner – original accused by the original complainant – officer of the Ahmedabad Municipal Corporation in the Court of learned Metropolitan Magistrate, Court No.8, Ahmedabad in criminal case No. 23671 of 2006 for the breach of Rule – 6(1) of Chapter – XII of the Bombay Provincial Municipal Corporation Act; 1949 (hereinafter referred to as “the BPMC Act” for short) alleging inter alia that without the prior permission of the corporation and without getting the plan sanctioned, the petitioner – original accused has started putting up construction by commencing work of laying down 15 pillars. The said complaint came to be filed on 8.11.2006 and the learned Metropolitan Magistrate has issued the summons upon the petitioner – original accused. Being aggrieved and dissatisfied with the same, the petitioner –

original accused has preferred the present petition under section 482 of the Criminal Procedure Code on the following grounds :-

3. The petitioner has not committed any offence as alleged and the construction work started by the petitioner is after getting the plan sanctioned in the year 1991 and as per the sanctioned plan of 1991; that proceedings are pending before this Court by way of Special Civil Application 2235 of 2006 in which the petitioner has prayed for an appropriate order to withdraw the notice issued by the Corporation under section 267 of the BPMC Act and further prayer is made for declaration of an appropriate direction directing the Corporation that the petitioner trust has right to carry out the construction according to the sanctioned plan and the Raja Chitthi dated 2.3.1991 and therefore, the complaint is not tenable; that in the complaint it does not disclose full facts with regard to pending proceedings and there is a suppression by the Municipal Corporation which shows the

conduct of the officer of the Corporation and even otherwise, the complaint does not disclose anything. It is submitted by Shri Gandhi, learned advocate appearing for the petitioner that the petitioner has started construction work as per the sanctioned plan sanctioned by the Corporation in the year 1991. It is further submitted by him that in view of many litigations pending, the petitioner could not start the construction work and/or put up the construction as per the sanctioned plan and Raja Chitthi of 1991 and they have started construction work in 2001 after vacating the interim orders. It is submitted that when the petitioner – original accused had started to put up the construction as per the sanctioned plan and the Raja Chitthi dated 2.3.1991, no offence has been committed by the petitioner as alleged in the complaint. It is further submitted by him that even otherwise, in view of the pendency of Special Civil Application No. 24235 of 2006, when this Court has directed the Corporation to consider the revised plan, the complaint is not

tenable and is required to be quashed and set aside. Shri Gandhi, learned advocate has relied upon the Raja Chitthi of 1991 as well as the plans sanctioned in the year 1991 in support of his above submissions.

4. On the other hand, Shri A.S.Asthavadi, learned advocate appearing for Shri Prashant G. Desai, learned advocate appearing on behalf of the Corporation has submitted that so far as Special Civil Application No. 24235 of 2006 is concerned, the said Special Civil Application has been filed by the petitioner only after filing of the impugned complaint. It is submitted that the complaint came to be filed on 8.11.2006 and the present petition has been filed on 21.11.2006 therefore, it is submitted that at the time when the complaint was filed as the Special Civil Application was not even filed, there is no question of mentioning the same in the complaint and therefore, there is no suppression in the complaint. Shri Asthavadi, learned advocate has produced on record the

order passed by the Division Bench of this Court dated 11.7.2007 passed in Special Civil Application No. 24235 of 2006 in which it is specifically observed by the Division Bench that the Corporation has already communicated to the petitioner vide communication dated 31.5.1999 indicating the grounds for not sanctioning the building plans and in fact, by communication dated 31.5.1999 the plans were not sanctioned and even the petitioner was required to supply the necessary information, undertaking and modifications and the petitioner was required to comply with the objections within 3 months from the date of receipt of such letter from the Corporation and still the petitioner did not respond to the said intimation. It is submitted that inspite of rejection of the plans and the communication dated 31.5.1999 indicating the grounds for not sanctioning the building plans, the petitioner started and continued to put up the construction and therefore, the petitioner has committed the offence as alleged in the complaint and therefore, the impugned complaint

is not required to be quashed and set aside. He has relied upon Rule – 6 of Chapter – XII of the BPMC Act and has submitted that when the petitioner is relying upon the plans of 1991 then after the expiry of the period of one year of the plan – Raja Chitthi, the petitioner could not have commenced the construction work and therefore, it is requested to dismiss the present petition.

5. Heard the learned advocates appearing for the respective parties.

6. It is required to be noted that the complaint is filed against the petitioner for the breach of Rule – 6(1) of Chapter – XII of the BPMC Act alleging inter alia that the petitioner has started to put up construction without getting the plan sanctioned. The petitioner – original accused was also served with the notice under section 267 of the BPMC Act. The complaint came to be filed on 8.11.2006 and the petitioner preferred the aforesaid Special Civil

Application No. 24235 of 2006 before the Division Bench of this Court on 21.11.2006 challenging the notice under section 267 of the BPMC Act. It is the contention on behalf of the present petitioner in the present application as well as in the said Special Civil Application that the petitioner is putting up the construction as per the sanctioned plan of 1991 and as per the Raja Chitti dated 2.3.1991. It is also the contention on behalf of the petitioner that as there were litigations pending of the interim injunction, the petitioner could not start putting up the construction and after vacating the interim injunction in the year 2001, he started to put up the construction. Now, the aforesaid aspect came to be considered by the Division Bench and at the time of hearing the aforesaid Special Civil Application, in the affidavit in reply filed by the Corporation, a communication dated 31.5.1999 communicating the grounds for not sanctioning of the building plans submitted by the petitioner in the year 1991 was produced. It was also pointed out that

the copy of the same was also served upon the petitioner. It was also pointed out that the petitioner was required to supply the necessary information, undertaking and modification, if any, and was required to comply with the objections within 3 months from the date of receipt of the letter from the Corporation. It was also pointed out by the Corporation that the petitioner has not responded to the above intimation. It was also submitted on behalf of the petitioner that by letter dated 16.9.1999 the petitioner addressed letter to the Corporation informing that the petitioner has removed the objections and to that the Division Bench has observed that the said communication dated 16.9.1999 takes us nowhere and in absence of the petitioner having given any satisfactory reply specifically dealing with the objections in the communication dated 31.5.1999, it is not possible to consider the petitioner's grievance. However, as a last opportunity, the Division Bench granted time to the petitioner to remove the objections pointed out in the above

communication dated 31.5.1999. No further direction has been issued by the Court. The order dated 11.7.2007 passed by the Division Bench of this Court in Special Civil Application No. 24235 of 2006 is reproduced as under :-

> *"Mr Prashant G Desai for the Corporation states that the Corporation gave copy of the communication dated 31.5.1999 indicating the grounds for not sanctioning the building plans submitted by the petitioner in the year 1999 and that a copy of the same has already been produced by the petitioner alongwith his affidavit dated 4.5.2007 at page 90. The petitioner was, therefore, required to supply the necessary information, undertakings and modifications, if any, required to comply with the objections within three month from the date of receipt of the letter from the Corporation. Mr Desai for the Corporation states that the petitioner has not responded to the above intimation.*
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> *2. Mr Gandhi for the petitioner has referred to the averments made in para 5 of the said affidavit dated 4.5.2007*

which merely states that after receiving the intimation containing the objections, the deficiency in the plan were removed as per Annexure – II.

We find that Annexure – II is a copy of the letter dated 16.9.1999 addressed by the petitioner to the respondent Corporation stating that the petitioner has removed the objections. The said communication dated 16.9.1999 takes us nowhere. In absence of the petitioner having given any satisfactory reply specifically dealing with the objections in the communication dated 31.5.1999, it is not possible to consider the petitioner's grievance.

3. Hence, last opportunity is given to the petitioner to remove the objections pointed out in the above communication dated 31.5.1999 within one month from today, failing which we will have no other alternative but to dismiss the petition. For this purpose, it will be open to the petitioner to approach the concerned officer who is stated to be Mr PN Patel, Inspector in the Town Development Department, Dariyapur Ward, Central Zone, Ahmedabad.

S.O. to 13th August, 2007."

Considering the above, it is crystal clear that the plans submitted by the petitioner in the year 1991 were not sanctioned by the Corporation and the petitioner was also communicated and informed with regard to the same by communication dated 31.5.1999 indicating the grounds for non sanctioning the building plans submitted by the petitioner in the year 1999. When the plans were not sanctioned in the year 1999 and the petitioner was also communicated with regard to not sanctioning of the plans vide communication dated 31.5.1999 and the objections were not removed and/or complied with as observed by the Division Bench, the petitioner could not have started putting up the construction. Reliance placed upon the plans sanctioned in the year 1991 and the Raja Chitti of 1991 is absolutely misplaced as subsequently the plans were submitted in the year 1999 and the same were rejected and/or not sanctioned by the Corporation vide communication dated 31.5.1999. Under the circumstances, it cannot be

said that no case is made out against the petitioner and that the criminal complaint is not required to be proceeded further. It is also required to be noted that the aforesaid Special Civil Application has been filed by the petitioner after the impugned complaint dated 8.11.2006 and the notice under section 267 of the BPMC Act. Under the circumstances, no case is made out to quash the complaint / criminal case in exercise of the powers under section 482 of the Criminal Procedure Code as the petitioner has started to put up the construction without the sanctioned plans.

7. For the reasons stated above, the petition is devoid of any merits and the said is required to be dismissed and is accordingly dismissed. Notice discharged. Ad-interim relief, if any, stands vacated forthwith.

[M.R.Shah, J.]

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